

SENATE BILL 2834

By Ford J

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 6, Part 1, relative to determination of custody of minor children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-6-101(a), is amended by adding the following as a new subdivision:

(4) Notwithstanding any common law presumption to the contrary, a finding under §36-6-106(8), that physical or sexual abuse has occurred within the family shall give rise to rebuttable presumption that it is detrimental to the child and not in the best interests of the child to award sole custody, joint legal or joint physical custody to the perpetrator of the abuse.

SECTION 2. Tennessee Code Annotated, Section 36-6-106(3), is amended by deleting the punctuation “;” at the end of the item and by substituting instead the following:

provided, that where there is a finding, under §36-6-108(8), of physical or sexual abuse by one (1) parent, and that a non-perpetrating parent has relocated in order to flee the perpetrating parent, that such relocation shall not weigh against an award of custody;

SECTION 3. Tennessee Code Annotated, Section 36-6-106(8), is amended by deleting the language “; and ” at the end of the item and by substituting instead the following:

provided, that where there are allegations that one (1) parent has committed a grossly offensive physical or sexual contact against a family member, the court shall consider all

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evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such physical or sexual battery has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected thereto. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings; and

SECTION 4. Tennessee Code Annotated, Section 36-6-107, is amended by designating the existing language of the section as subsection (a) and by adding the following as a new subsection (b):

(b) Where the court makes findings of physical or sexual abuse under § 36-6-106(8), the court may only award visitation under circumstance that guarantees the safety of the child. In order to guarantee the safety of the child, the court may order:

- (1) That all visits be supervised by a responsible adult or agency, the costs to be primarily borne by the perpetrating parent;
- (2) That the perpetrating parent attend and complete a program of counseling or other intervention as a precondition to visitation;
- (3) That overnight visitation be prohibited until such time that the perpetrating parent has completed court ordered counseling or intervention, or otherwise demonstrated a change in circumstances that guarantees the safety of the child;
- (4) That the address of the child and the non-perpetrating parent be kept confidential; and
- (5) Any other conditions the court deems necessary and proper to guarantee the safety of the child.

SECTION 5. This act shall take effect July 1, 1998, the public welfare requiring it.

